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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/643,460 | 08/18/2003 | Kelly J. Fisher | | 4102 |

7590 02/06/2004
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| EXAMINER |
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HALE, GLORIA M

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| ART UNIT | PAPER NUMBER |
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3765

DATE MAILED: 02/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,460

Applicant(s)

FISHER, KELLY J.

Examiner

Gloria Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. ____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. On page 5 of the specification it is stated that the pocket is on the "inside" of the brassiere and on page 7 it says it is on the "backside" of the brassiere. This description is unclear and confusing in that it appears that the pocket is attached to the inside surface of the front of the brassiere.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 7-10 the description of the breast being in an "upper portion" is not clear. In line 9 there is no antecedent basis for "the lower breast". The claim does not positively recite the pad as being retained in the pocket but is just "capable of" being positioned. Therefore it is not clear as to whether the bra structure with the pocket and the pad as being within the pocket is actually being positively claimed. The

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bra structure itself should be recited first with the structure of the pad and with the pad being placed within the pocket since the pad is not removable from the pocket since an open opening to the pocket has not been claimed nor has a fastener on the pocket to allow for the removal or insertion of the pad within the pocket as desired. In regard to claim 4 the attachment of the pocket to the "backside" of the bra is confusing since the specification describes the pocket as being on the "inside" and then it describes it on the "backside" as discussed above. However, it appears that the pocket is on the "backside" of the front of the garment which is also the inside surface of the front. In claim 5, line 2, the recitation "breasts between the breasts" is unclear. It is actually the "breast area" or "portions of the breast" that is between the breasts. Claim 1 can be amended as follows to clarify the above deficiencies.

A breast supporting brassiere to prevent wrinkles on the breasts and the chest skin between the breasts of a wearer while a wearer sleeps on their side and wherein when the wearer is positioned on their side one breast is in an upper position and the other breast lies there under in a lower position; the brassiere comprising:

a soft fabric brassiere comprising a body encircling portion with a pair of curved front portions for supporting the breasts of a woman and a centrally located retainer means positioned between the curved front portions adapted to retain the breast support pad there between; and

a breast support pad capable of being positioned between the breasts of the wearer, the support pad comprising a firm body having a vertical section with a thick

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midsection, a back surface capable of conforming to the chest surface between the breasts of the wearer and a concave curved cavity on each side of the vertical section capable of supporting either breast of the wearer while on their side to prevent the breast in the upper position from hanging down toward the breast in the lower position and thereby preventing wrinkling of the skin on the chest of the wearer between the breasts.

Claim Objections

Claims 1-6 are objected to because of the following informalities: The reference to a specific female wearer such as "her" should be avoided and the "female" should be referred to as a generic "wearer". Appropriate correction is suggested above.

However, the claims, as best understood have been examined on their merits.

Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 2-6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references disclose brassieres with breast pillows and pads.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 703-308-1282.

The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale
Primary Examiner
Art Unit 3765
